

## **CUPA Deficiency Status Report**

Dear David Parker:

Santa Clara City Fire Department's Certified Unified Program Agency has recently been evaluated by Cal/EPA and evaluators from OES and DTSC. On behalf of the evaluation team, I thank you for your participation and effort in the implementation of the CUPA program. We realize that the evaluation process is time consuming and diverts resources from normal Unified Program activities to meet the needs of the evaluation team; however, the evaluation process is important for measuring program growth, determining areas where improvements are needed, and maintaining focus on the goals set forth by Santa Clara City Fire Department. The purpose of this letter is to observe the corrective actions taken by Santa Clara City Fire Department for all deficiencies found during the last evaluation. Please respond to each deficiency listed below and email this completed response letter to Kareem Taylor at [kareemt@calepa.ca.gov](mailto:kareemt@calepa.ca.gov).

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**CUPA Name:** Santa Clara City Fire Department

**Date of Evaluation:** September 22 and 23, 2005

### **State Evaluation Team**

**Cal/EPA Team Leader:** John Paine

**DTSC Evaluator:** Mark Pear

**OES Evaluator:** Fred Mehr

## **Deficiencies and Corrective Actions\***

1. **Deficiency:** Annual reporting of inspection and enforcement data to Cal EPA under reports accomplishments,

**CUPA Corrective Action:** CUPA has incorporated our "Procedures for Conducting CUPA Inspections, Fire Code Inspections, and Combined Inspections" (see attached Division 400, Article 5) into our Policies and Procedures. These procedures do partially rely on greater clerical support time than current budget conditions permit. Clarification by Cal EPA staff that Violation Notices are considered informal enforcement will greatly increase the number of enforcement actions reported. We have improved our inspection software to have the capability to track escalating enforcement actions.

2. **Deficiency:** Concern was expressed that all UST sites were not inspected annually and that data from two data sources may not be consistent.

**CUPA Corrective Action:** The inspection frequency rate for the last three fiscal years is: 1/1/04-6/30/04 49 sites at 33 of 72 sites = 46% for the last six months of the fiscal year (Extrapolate to 66 of 72 sites = 92% for a twelve month period if you like.) We changed databases half way through that year. The first six months data is not retrievable from the old system. FY04/05: 94 inspections at 61 of 71 facilities = 86%. FY 05/06: 131 inspections at 68 of 68 sites = 100%. Some of the data confusion resulted from our reporting inspections conducted in one of our data systems, rather than sites inspected. Inspection rates greater than 100% resulted from multiple inspections at several sites. (Cal EPA may want to consider reporting inspections conducted as well as sites inspected while developing its web based (Unidocs) UST data gathering program. Local agencies want to know total number of inspections conducted to obtain an accurate workload picture for inspectors. In addition to annual CUPA UST inspections, we conduct annual and permit (installation, modifications, removal) Fire Code UST inspections at these sites. A small number of sites were not inspected some years due to workload and scheduling constraints resulting from our having only one certified inspector. We plan to have a second inspector certified this year. We will also create a report that tracks facilities inspected as well as total number of UST inspections. As a longer-term solution, we are scheduled to meet with Cal EPA personnel regarding a pilot program to make our inspection database server XML compliant so Cal EPA can obtain this information directly from our server when needed.

3. **Deficiency:** UNIDOCs' template for the Emergency Response Plans and Procedures does not contain provisions for mitigation, prevention, or abatement of hazards to persons, property, or the environment.

**CUPA Corrective Action:** See Part 7 of the UNIDOCs Emergency Response/Contingency Plan (bottom of page 12 of 17) for the Hazard Mitigation/prevention/Abatement requirement.

4. **Deficiency:** The CUPA has not developed or implemented a procedure for CalARP Dispute Resolution process.

**CUPA Corrective Action:** The CUPA has not had any CalARP disputes. The attached "CalARP Dispute Resolution" document (see attached Division 600, Article 1) has been incorporated in our Policies and Procedures manual.

5. **Deficiency:** The CUPA's Inspection and Enforcement Plan does not include their administrative action (letter/order) and citations policy and procedure.

**CUPA Corrective Action:** CUPA has incorporated our "Formal Enforcement – Administrative Letters" policy and procedures (see attached Division 500, Article 15) into our Inspection and Enforcement Plan.

6. **Deficiency:** CUPA did not take appropriate enforcement actions for recalcitrant facilities where the same or similar violations were found.

**CUPA Corrective Action:** CUPA agrees with (and has included in our Policies and Procedures for years) the policy of escalating to class 1 recurring minor violations or recalcitrant facilities. CUPA has filed criminal complaints with the City Attorney and District Attorney, issued citations and AEO's for these situations. CUPA believes the decision to escalate to formal enforcement should be based on all the facts and conditions observed during an inspection or emergency response. CUPA does not believe all the facts and conditions observed during the inspections at the referenced facility warranted escalation.

**DTSC Response to CUPA Corrective Action:** *DTSC agrees with the CUPA's assertion that the decision to escalate the classification of a violation should be based on the facts and conditions observed during an inspection. DTSC's concern is whether this is occurring, both with and outside of this instance. DTSC believes that at a minimum, the pattern of violations should have led the inspector to classify the violation as Class II instead of Minor based on the definition of a minor violation in HSC 25404(a)(3): "the UPA shall consider whether there is evidence indicating*

*that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements". Perhaps the deficiency should have addressed DTSC's belief that the CUPA had misclassified the severity of the violation since it clearly is no longer a minor violation as was indicated by data reported by the CUPA, and not necessarily to the point that warranted formal enforcement.*

**CUPA Response to DTSC Comment:** *We are in agreement that we may have misclassified the severity of the violation. We will closely scrutinize this facility and its compliance history during our next inspection.*

7. **Deficiency:** CUPA failed to correctly classify violations as Class 1 violations and subsequently take the appropriate enforcement actions.

**CUPA Corrective Action:** All Permit by Rule or Conditionally Authorized liquid waste treatment systems within the City of Santa Clara are completely secondarily contained. A catastrophic failure of a tank would not result in a release to the environment or necessarily a significant threat to human health or safety. Based on the definition of a Class I violation found in Health and Safety Code section 25110.8.5, we did not feel that the lack of a current professional engineer's certification met the definition of a Class I violation.

**DTSC Response to CUPA Corrective Action:** *DTSC disagrees with the CUPA's assessment of the potential severity of the violations regarding failure to routinely certify the integrity of a tank system. While the tanks in question had been certified at time of installation, the 5-year reassessment time frame was placed in regulation in order to meet industry established standards (American Petroleum Institute, standard 653) for inspection of tanks (according to the Initial Statement of Reasons of the regulations). Failing to ensure that the tank system, which includes the secondary containment, is in good operating condition every five years "is significant enough that it could result in a failure to....prevent releases of hazardous waste to the environment" (from the definition of Class I violation, HSC, section 25110.8.5). The CUPA, by choosing to ignore the re-assessment requirements just because secondary containment has been installed is allowing businesses in the City of Santa Clara to work at an economic advantage to those in close proximity, such as San Jose, and is not acceptable to DTSC.*

**CUPA Response to DTSC Comment:** *We apologize for the apparent misunderstanding regarding our stance on the recertification of hazardous waste tank systems. The Santa Clara Fire Department does require 5 year recertifications of all hazardous waste tank systems within the City limits. We do not allow companies to ignore or fail to comply with this requirement. Our contention is, however, that a tank system that is one*

*day, several weeks or even a couple of months overdue for the recertification does not constitute an immediate threat to life, health or the environment, and therefore does not warrant formal enforcement action, especially when the tank system is entirely secondarily contained. Our current policy is to issue a Notice of Violation when we find a system overdue for recertification. Should the company fail to obtain the certification within a reasonable time frame, we would then escalate enforcement. To date, all companies have complied and we have not needed to resort to formal enforcement.*

\* Note – Cal/EPA has re-formatted the "Deficiencies and Corrective Actions" to include additional information (in italics) submitted by the DTSC and the CUPA.